

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EB-08 CIAE-00 DODE-00 INR-10
NSAE-00 PA-02 ICA-20 SP-02 COME-00 L-03 SS-15
NSC-05 H-02 CEA-01 STR-07 XMB-04 OPIC-06 /098 W
-----094486 292133Z /41

R 291407Z JUN 78
FM AMEMBASSY LONDON
TO SECSTATE WASHDC 7671
TREASURY DEPT WASHDC
INFO AMEMBASSY PARIS

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PARIS PASS DAVID ROSENBLOOM, USOECD; TREAS. PASS SUNLEY

E.O. 11652: N/A
TAGS: EFIN, UK
SUBJECT: PRESS ON THE PROSPECTS FOR THE UK-US DOUBLE /
TAX TREATY

1. PRESS SPECULATION AND COMMENT ON THE PROSPECTS FOR
PARLIAMENTARY APPROVAL OF THE UK-US DOUBLE TAX TREATY
WITHOUT SECTION 9(4) CONTINUED TODAY.

2. THE FINANCIAL TIMES REPORTS, IN A FRONT-PAGE STORY,
THAT THE ODDS FOR ACCEPTING THE TREATY AS PASSED BY THE
US SENATE ARE IMPROVING. IT WRITES:
QUOTE:

SIGNS ARE GROWING THAT THE BRITISH GOVERNMENT WILL
ACCEPT THE U.S. SENATE'S REMOVAL FROM THE ANGLO-AMERICAN
DOUBLE TAXATION TREATY OF THE CONTROVERSIAL CLAUSE CURB-
ING STATES' RIGHTS TO TAX ON A UNITARY BASIS.

AT THE SAME TIME IT EMERGED THAT ALASKA, ONE OF THE
THREE STATES PROPOSING TO APPLY UNITARY TAXATION TO FOR-
EIGN COMPANIES, HAS ABANDONED THE IDEA AS FAR AS OIL PRO-
DUCTION IS CONCERNED.

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THIS MEANS THAT BRITISH PETROLEUM, THE ONLY SIGNIFI-
CANT UK OPERATOR IN THE STATE WILL NOT, AS IT FEARED,
HAVE TO PREPARE WORLD-WIDE ACCOUNTS ON A U.S. BASIS.

THE ALASKAN MOVE REINFORCES THE LIKELIHOOD THAT THE
UK WILL NOT TRY TO MAKE AN ISSUE OF THE LOSS OF THE RELE-

VANT PART OF THE TREATY -- CLAUSE 9.4.

THE OPTIONS OPEN TO THE UK GOVERNMENT FOLLOWING THE RATIFICATION OF THE TREATY BY THE SENATE ON TUESDAY WITHOUT CLAUSE 9.4 ARE:

TO PASS A PROTOCOL THROUGH THE COMMONS ACCEPTING THE DELETION; TO SEEK A COMPENSATING CONCESSION FROM THE U.S. TREASURY; OR TO RENEGOTIATE FROM SCRATCH.

BOTH THE LAST TWO WOULD ENTAIL LONG DELAYS, DURING WHICH THE CURRENT TREATY, FIRST AGREED IN 1946 AND SINCE MANY TIMES AMENDED, WOULD REMAIN IN EFFECT.

IT IS FELT THAT CONTINUING UNDER THE OLD TREATY WOULD BE AS DISADVANTAGEOUS FOR THE BRITISH AUTHORITIES AND TAXPAYERS AS FOR THE AMERICANS.

AT THE SAME TIME, THE BRITISH WOULD BE FOREGOING SUMS ESTIMATED TO BE AS HIGH AS 50 MILLION POUNDS A YEAR BY NOT CLOSING AN ANOMALY CONCERNING FOREIGN BANKS IN THE OLD TREATY. A SIMILAR AMOUNT IS AT STAKE OVER CAPITAL GAINS ON DISPOSALS BY U.S. GROUPS OF NORTH SEA CONCESSIONS.

THE FEELING SEEMS TO BE THAT THE U.S. TREASURY'S ORIGINAL ACCEPTANCE OF CLAUSE 9.4 WAS A SURPRISING CONCESSION AND ITS DELETION SHOULD NOT CAUSE THE LOSS OF THE WHOLE TREATY. UNQUOTE

3. THE TIMES LEAD EDITORIAL WEIGHS WHAT IT REGARDS AS UNCLASSIFIED

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THE UNSATISFACTORY SITUATION ARISING FROM THE SENATE'S REFUSAL TO RATIFY THE TREATY INCLUSIVE OF THE 9(4). IT WRITES:
QUOTE:

... IT MAY BE A TEMPTING REACTION TO SUGGEST THAT THE WHOLE TREATY SHOULD NOW BE RENEGOTIATED. IT WOULD, HOWEVER, BE UNREALISTIC TO SUPPOSE THAT SUCH A COURSE OF ACTION WOULD GET THE ARTICLE REINSTATED IN THE SHORT TERM. IN THE FIRST PLACE, THERE IS NO LIKELIHOOD THAT THE ADMINISTRATION WOULD BE ANY MORE SUCCESSFUL WITH THE SENATE AT A NEW TRY. FURTHER, WITH THE PRESENT MOOD OF FISCAL POLITICS IN STATES LIKE CALIFORNIA, EVIDENT OUTSIDE PRESSURE FOR CHANGE IN LOCAL TAXATION WOULD BE BOUND TO BE COUNTER-PRODUCTIVE.

THE ISSUE, THEREFORE, RESOLVES ITSELF TO THE QUESTIONS OF WHETHER THE OTHER PROVISIONS OF THE NEW DOUBLE TAXATION AGREEMENT TAKEN TOGETHER ARE OF ADVANTAGE FROM THE BRITISH POINT OF VIEW, COMPARED WITH ALLOWING THE SITUATION TO CONTINUE AS BEFORE, GOVERNED BY THE EXISTING DOUBLE TAXATION AGREEMENT. THE SITUATION, OF COURSE, IS MOST UNSATISFACTORY FOR THOSE WITH OPERATIONS IN THE

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-----094471 292133Z /41

R 291407Z JUN 78
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RELEVANT STATES, OR WHO ARE PLANNING SUCH NEW INVEST-
MENT. FOR, IN EFFECT, THEY ARE HAVING TO CONDUCT AND
PLAN OPERATIONS WITH NO CLEAR KNOWLEDGE AT ALL OF THE TAX
REGIME UNDER WHICH THEY WILL BE OPERATING. THE HUGE AREA
OF UNCERTAINTY THUS INVOLVED CAN ONLY BE DAMAGING. THAT
UNCERTAINTY, HOWEVER, EXISTS UNDER THE PRESENT AGREEMENT,
AS WELL AS UNDER THE NEW AGREEMENT, AS NOW AMENDED BY THE
SENATE.

THE CONCESSIONS WHICH THE BRITISH SIDE ARE SUPPOSED
TO HAVE MADE IN THE NEGOTIATION OF THE NEW TREATY MAY
HAVE BEEN EXAGGERATED. AMERICAN COMPANIES WOULD GET A
FAVOURABLE OVERALL TAX TREATMENT OF THEIR OPERATIONS IN
THIS COUNTRY. MOST OF THE ADVANTAGE, HOWEVER, WOULD SEEM
TO BE AT THE EXPENSE OF THE AMERICAN INTERNAL REVENUE
SERVICE, RATHER THAN OF OUR OWN INLAND REVENUE. ON THE
OTHER HAND, THE NEW AGREEMENT PROVIDES A SAFEGUARD FOR
THE TREATMENT OF OUR PETROLEUM REVENUE TAX, THE STATUS OF
WHICH AS A TAX ON PROFITS HAS BEEN QUESTIONED BY THE
AMERICANS. IT ALSO WOULD EXTEND OUR POWERS TO TAX THE
OPERATIONS OF AMERICAN BANKS IN THIS COUNTRY AND EXTEND
THE OPERATION OF CAPITAL GAINS TAX ON THE DISPOSAL OF

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ASSETS TO COVER THE WHOLE OF THE CONTINENTAL SHELF.

THE ARGUMENT AGAINST ACCEPTING THE AGREEMENT WITH-
OUT ART. 9(4) RESTS MORE ON THE IMPORTANCE OF NOT SEEM-
ING TO ACCEPT THE PRINCIPLE OF THE UNITARY TAX SYSTEM.
MUCH WORK HAS GONE INTO THE DEVELOPMENT OF MODEL DOUBLE
TAXATION AGREEMENTS, IN ORDER TO PRODUCE GREATER HARMONI-
ZATION OF INTERNATIONAL TAX REGIMES. THIS ARGUMENT,
HOWEVER, DOES NOT SEEM TO OUTWEIGH THE PRACTICAL ADVAN-
TAGES OF HAVING THE IMPROVEMENTS CONTAINED IN THE REST
OF THE DOUBLE TAXATION AGREEMENT. THE HOPE WOULD BE
THAT, MEANWHILE, THE FASHION FOR THE UNITARY TAX SYSTEM
WOULD WANE AS ITS PRACTICAL AND POLITICAL DISADVANTAGES
BECAME MORE APPARENT.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENTS, TAXES
Control Number: n/a
Copy: SINGLE
Draft Date: 29 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978LONDON10319
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780269-0911
Format: TEL
From: LONDON
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t1978068/aaaaagka.tel
Line Count: 187
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: ec04c68c-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2429572
Secure: OPEN
Status: NATIVE
Subject: PRESS ON THE PROSPECTS FOR THE UK-US DOUBLE / TAX TREATY
TAGS: EFIN, UK, US
To: STATE TRSY
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/ec04c68c-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014